IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 11 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

KASTURBHAI MAYABHAI PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Commissioner of Income-tax, Gujarat-I, Ahmedabad, the Income-tax Appellate Tribunal, Ahmedabad Bench 'C' has referred following question of law for the opinion of this Court with regard to Assessment Year 1982-83 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the theatre building should be treated as plant, and the assessee should be given depreciation at the rate applicable to plant ?"

2. The assessee claimed depreciation on a cinema building at 5% for the year under consideration. Previously the assessee had claimed depreciation at the rate of 2 1/2% on the cinema building. The Income-tax Officer had rejected the claim of the assessee and the view taken by the Income-tax Officer was confirmed by the Commissioner of Income-tax (Appeals). However, the Appellate Tribunal held that the theatre building should be taken as plant and the rate of depreciation should be applied accordingly.

3. Though the respondent is duly served, no one appears on behalf of the respondent.

4. We have heard the learned counsel for the Revenue. The learned counsel for the Revenue states that the controversy raised in the present Reference is concluded in favour of the Revenue by judgment of the Supreme Court in Commissioner of Income-tax v. Anand Theatres, (2000) 244 ITR 192. In the above referred to decision, the Supreme Court has held that nature of plant and building is different and theatre building as well as hotel building specially equipped for the purposes of business are still buildings and are not entitled to depreciation at the rate applicable to plant. In view of the principle laid down by the Supreme Court, we are of the opinion that on the facts and in the circumstances of the case, the Appellate Tribunal was not right in law in holding that the theatre building should be treated as plant and the assessee should be given depreciation atthe rate applicable to plant. The Reference, therefore, is answered in favour of the Revenue and against the assessee. The Reference accordingly, stands disposed of, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)